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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,431	12/03/2003	Don R. Mydland	03-0038	5818
30550	7590	03/01/2005	EXAMINER	
BILL & MARY LOU INC. 101 LOMBARD STREET #510 W SAN FRANCISCO, CA 94111			WONG, STEVEN B	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/726,431	<b>Applicant(s)</b> MYDLAND, DON R.	
	<b>Examiner</b> Steven Wong	<b>Art Unit</b> 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2004.  
2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 10-17 is/are allowed.  
6) ☒ Claim(s) 1,2,18 and 19 is/are rejected.  
7) ☒ Claim(s) 3-9 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 18 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 18, step d is indefinite as it recites "removing the force on the device", however, step b which recites the use of force does not positively define the force being applied to the device. Step b states that force "may be applied to the device". Thus, the force is not clearly being recited as being applied to the device between the 2 fingers and the palm of the hand.

***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murdock, Jr. (3,671,037) in view of Bressie (4,660,837). Note the basis for the rejections set forth in the first Office Action.

***Response to Arguments***

3. Applicant's arguments filed December 8, 2004 have been fully considered but are not deemed to be persuasive. The applicant argues the combination of Murdock, Jr. in view of Bressie does not teach the means plus function structure recited in claim 1. However, while the combination does not teach the specific structure, it does teach structure that is functionally

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equivalent to that of the instant invention and therefore provides a prima facie case of obviousness. The means identified by the examiner in the combination of Murdock, Jr. in view of Bressie performs the identical function specified in instant claim 1 and produces substantially the same results as the corresponding elements disclosed in applicant's specification.

Murdock, Jr. provides equivalent structure to applicant's means for inserting a golf tee in the device. Murdock, Jr. provides an opening (16) that is equivalent to applicant's opening in the bottom of the invention for insertion of the golf tee.

Murdock, Jr. provides equivalent structure to applicant's means for retaining the golf tee head in the device. Murdock, Jr. provides a dovetail groove that retains the head that is equivalent to applicant's ball bearings that retain the head.

Murdock, Jr. provides equivalent structure to applicant's means for selecting a tee head height above the ground. Murdock, Jr. provides screws (50, 52) and gauges (18, 20) that are equivalent to applicant's helical groove with a corrugated surface.

Murdock, Jr. provides equivalent structure to applicant's means for releasing a golf tee from the device. Murdock, Jr. provides a pivotally affixed portion (84) that pivots to permit release of the tee. This structure is equivalent to applicant's movable set of ball bearings.

Murdock, Jr. also provides a means for gripping the device, however, he lacks the teaching for the means to fit a golf ball thereto. The reference to Bressie teaches a concave inwardly dished surface for the golf teeing device for gripping purposes. It would have been obvious to one of ordinary skill in the art to form the handle of Murdock, Jr. with a concave dished surface in order to fit a golf ball for gripping purposes. The combination of Murdock, Jr.

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in view of Bressie provides an equivalent structure to the means for gripping the device with the golf ball in the heel of the hand as instantly recited.

***Allowable Subject Matter***

4. Claims 3-17 appear to read over the prior art of record.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Wong whose telephone number is 571-272-4416. The examiner can normally be reached on Monday through Friday 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 571-272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Steven Wong  
Primary Examiner  
Art Unit 3711

SBW  
February 25, 2005